

# ARKANSAS SUPREME COURT

No. 06-825

NOT DESIGNATED FOR PUBLICATION

WILLIE G. DAVIS, JR.  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      November 16, 2006

*PRO SE* MOTIONS TO FILE BELATED  
BRIEF AND TO FILE BRIEF WITH  
EXTENDED ARGUMENT [CIRCUIT  
COURT OF LINCOLN COUNTY, LCV  
2006-27, HON. ROBERT HOLDEN  
WYATT, JR., JUDGE]

APPEAL DISMISSED; MOTIONS  
MOOT.

---

## PER CURIAM

Appellant Willie G. Davis is an inmate in the custody of the Arkansas Department of Correction. Appellant filed a *pro se* petition for writ of *habeas corpus* in Lincoln County Circuit Court, which petition was denied. Appellant has lodged an appeal of that order in this court, and in the motions now before us requests permission to file a belated appellant's brief and permission to file a brief with an extended argument. Because it is clear that appellant could not prevail on appeal, we must dismiss his appeal, and the motions are therefore moot.

This court has consistently held that an appeal of the denial of postconviction relief, including an appeal from an order that denied a petition for writ of *habeas corpus*, will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318

Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*). Appellant failed to raise in his petition a claim upon which a writ of *habeas corpus* could issue, and it is therefore clear that he could not prevail on appeal.

Unless a petitioner can show that the trial court lacked jurisdiction or that the commitment was invalid on its face, there is no basis for a finding that a writ of *habeas corpus* should issue. *Birchett v. State*, 303 Ark. 220, 795 S.W.2d 53 (1990) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. § 16-112-103 (1987). See *Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989); see also *Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991).

Despite appellant's assertion that the facts recited in his petition form the basis for allegations that the trial court lacked jurisdiction, the claims in appellant's petition do not assert any invalidity of the commitment on its face or lack of jurisdiction. Appellant's claims are founded upon the following allegations: (1) he was not given proper notice of a proceeding concerning withdrawal of blood; (2) a laboratory report was improperly admitted; (3) certain testimony was false and the prosecution's failure to correct it violated appellant's right to due process; (4) an investigator had tampered with certain evidence collected prior to admission into evidence. None of these claims are sufficient to establish that the commitment was invalid on its face or that the trial court was without jurisdiction.

Appellant asserts the trial court lost jurisdiction, but he fails to show that the alleged acts would be anything more than procedural errors during the trial. A *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case. *Meny v. Norris*, 340 Ark. 418, 420, 13 S.W.3d

143, 144 (2000). A writ of *habeas corpus* will not be issued to correct errors or irregularities that occurred at trial. The remedy in such a case is direct appeal. *Id.*

Appellant's petition did not state claims that would support issuance of the writ. Because appellant has failed to raise a claim upon which a writ of *habeas corpus* could issue, we dismiss the appeal of the order of the trial court denying his petition, and the motions are therefore moot.

Appeal dismissed; motions moot.

Glaze, J., not participating.